

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

SMITHS GROUP, PLC,

Plaintiff,

Case No. 0:13-cv-00052-DSD-TNL

vs.

RONALD A. FRISBIE,

Defendant.

**PLAINTIFF'S REPLY MEMORANDUM IN FURTHER
SUPPORT OF MOTION FOR A TEMPORARY RESTRAINING ORDER**

Plaintiff respectfully submits this reply memorandum in further support of its motion for a temporary restraining order.

Last night, Defendant Ronald Frisbie filed supplemental papers which he contends show that his “employer” is a subsidiary of Plaintiff called Smiths Medical ASD, Inc. (“ASD”). This contention is not only wrong (for reasons which need not be addressed on this motion), it is, more importantly, irrelevant. The relevant question is not which entity is the “employer” of Mr. Frisbie; it is which entity is party to the contract which underlies this breach of contract action.

For reasons detailed in the Declaration of Adam Jones, the party to the contract at issue is Smiths Group, plc. (“Group”). The contract makes no mention whatsoever of ASD, it is signed on letterhead listing the address of Group, it contemplates Mr. Frisbie providing services to subsidiaries within the medical division of Group all around the world, it was executed at a time when the division was headquartered in Group’s offices

in London, and it was signed by the Group Managing Director responsible for the medical division of Group. Mr. Frisbie does not and cannot dispute any of these facts. There is simply no basis to conclude that this is a contract made by ASD, and every indication to conclude that it is a contract made by Group.

At the very least, Plaintiff has adequately established a “reasonable probability of success” on this issue, which is all that is necessary to support entry of the provisional relief sought by Plaintiff at this stage. *See Hedberg v. State Farm Mut. Auto Ins. Co.*, 350 F.2d 924, 929 (8th Cir. 1965).

Dated: January 22, 2013

Respectfully submitted,

GREENE ESPEL PLLP

s/ Lawrence M. Shapiro
Lawrence M. Shapiro, P.A.
Campbell Mithun Tower – Suite 2200
222 South Ninth Street
Minneapolis, Minnesota 55402
(612) 373-8325

-and-

DEBEVOISE & PLIMPTON LLP
Jyotin Hamid, Esq.*
Claire Martirosian, Esq.*
919 Third Avenue
New York, New York 10022
(212) 909-1031
*Admitted *pro hac vice*

Counsel for Plaintiff Smiths Group, plc